IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 3317 OF 2006.

Shri Suhas Raikar ... Petitioner.
V/s.
Krishna D. Rale ... Respondent.

Shri P.S. Dani for the petitioners.

Shri S.S. Patwardhan for the respondent.

Shri A.A. Kumbhakoni, Associate Advocate General.

CORAM : V.C.DAGA, J.

DATED : 27.9.2006.

P.C. :

. This petition is directed against the order dated 21.3.2006 passed bythe Additional Commissioner, Pune Division, Pune, rejecting revision application; thereby confirming the order dated 15.4.2005 in Application No.19/2001; directing the petitioner-tenant to vacate the suit premises.

2. Shri Dani, Learned Counsel appearing for the petitioner submits that the agreement granting leave and licence is not a registered document. He submits that considering sweep of section 24 read with section 55 of the Bombay Rent Act, the same should not be treated as conclusive evidence of relationship of licensor and licensee between the parties. In his submission, it was open for the petitioner to prove that the agreement in question

is not license but in substance and reality it is an agreement of tenancy.

3. Shri Dani further submits that section 55 of the Bombay Rent Act has overriding effect over section 24 of the Act. Alternatively, he submits that if agreement is not registered, then it cannot be treated as conclusive evidence; especially; when there is no proof contrary thereto.

3. Shri Dani tried to distinguish the judgment of the learned Single Judge of this Court in the case of **Raj P.Kondur vs. Arif Taher Khan 2005 (4) Bom.C.R. 383,** to contend that absence of registration of the agreement is fatal. He thus, urged that the competent authority is not empowererd to entertain this unregistered leave and license agreement in evidence.

4. Shri Patwardhan appearing for the respondent, while reacting on the aforesaid submissions tried to rely on the above judgment in the case of Raj P. Kondur (Supra) to contend that the view taken by the learned Single Judge needs no reconsideration.

Consideration:

5. Having heard parties at length and having

seen judgment of the learned Single Judge in case of Raj P. Kondur (cited supra), no case is made out either to take a different view or to distinguish the said judgment. The view taken by the Courts below is a reasoinable and possible view based on law laid down by this Court.

6. Having said so, it is necessary to take note of the judgment of the Apex Court in the case of **Laxmikant Revchand Bhojwani & anr. vs. Pratapsingh Mohansingh Pardeshi (1995) 6 SCC 576,** in para 9, before considering rival submissions, wherein following observations were made:

> . " Before parting with this judgment, we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

7. Bearing in mind the above observations of the Apex Court and considering concurrent finding of fact recorded by the authorities below, it is very difficult to reach to the conclusion that the

impugned order is a perverse order. Cogent reasons are given by the revisional authority while confirming the findings of fact recorded by the competent authority. The impugned order cannot be said to be perverse by any stretch of imagination.

8. At this stage, Shri Dani prays for stay of this order for a period of eight weeks from today for approaching higher Court. Learned Counsel for the respondent has no objection. Accordingly, petitioner is granted eight weeks time to vacate the suit premises, on filing undertaking to this Court within one week from today, to the effect that in the event of he failing before the higher Court, he shall vacate and hand over vacant and peaceful possession of the suit premises to the respondent without any obstruction. Undertaking should be signed by all the adult members of the family occupying the4 suit premises.

9. In the above view of the matter, petition is without any substance. The same is liable to be dismissed.

10. In the result, petition is dismissed in limine with no order as to costs.

(V.C. DAGA,J.)